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No. 378

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

NATIONAL AIRLINES, INC.,

Petitioner,

—v.—

BERYL WHITEMAN STILES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

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No. .....

NATIONAL AIRLINES, INC.,

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—v.—

BERYL WHITEMAN STILES,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on June 12, 1959.

Citations to Opinions Below

The Decree of the District Court was filed October 17, 1958, without an opinion, and is unreported. The Decree is printed in Appendix B hereto, page 2a. The opinion of the Court of Appeals is not officially reported, but is unofficially reported at 6 CCH Avi. page 17,515, and is printed in Appendix C hereto, page 3a. The dissenting opinion of Judge Cameron of the Court of Appeals is likewise printed in Appendix C hereto, commencing page 13a.

Jurisdiction

The judgment of the Court of Appeals for the Fifth Circuit was dated and entered on June 12, 1959 (R. 115; Appendix C, p. 18a). Rehearing was not requested of that Court.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

Questions Presented

1. Does the Death on the High Seas Act, 41 Stat. 537, 46 U. S. C. §§761-768, permit the awarding of interest from the date of death on the decree assessing damages?
2. Is the measure of damages under the Death on the High Seas Act, 41 Stat. 537, 46 U. S. C. §§761-768, to be determined by the law of the place where decedent was resident at the time of death?

Statute Involved

The statutory provisions involved are Sections 1 and 2 of the Death on the High Seas Act, 41 Stat. 537, 46 U. S. C. §§761 and 762. They are printed in Appendix A hereto, page 1a.

Statement

On February 14, 1953 an aircraft of National Airlines, Inc. (Petitioner herein) was lost in a storm in the Gulf of Mexico at a point more than a marine league from the coast of the United States (R. 9, 10). This aircraft was on a regularly scheduled flight from Miami and Tampa to New Orleans. Harry F. Stiles, Jr., a passenger on that flight,

died in the accident. His widow, Beryl Whiteman Stiles (Respondent herein), instituted this action in the District Court, invoking the admiralty jurisdiction of that Court to recover damages for the death of her husband pursuant to the provisions of the Death on the High Seas Act, 41 Stat. 537, 46 U. S. C. §§761-768 (R. 24). The District Court tried the issues of liability and damages separately. Trial of the issue of liability took place on March 11, 1957, resulting in a judgment in favor of Respondent rendered by the Court on March 28, 1958, more than a year after the trial (R. 8). No appeal was taken from this judgment. Trial of the issue of damages took place on August 4, 1958. The Court rendered its decree on this issue on October 7, 1958 and awarded damages to Respondent in the sum of $250,000.00, with interest at the rate of 5 per cent per annum from the date of death, until paid, and all costs (R. 79). The Court did not file any opinion with this judgment. Nor did it make any findings of fact or conclusions of law with respect thereto. Petitioner appealed from this judgment to the Court of Appeals for the Fifth Circuit specifying as error that (1) the District Court had not applied the proper rule of damages under the Death on the High Seas Act, and (2) the Act does not permit the awarding of interest from the date of death. Petitioner did "not attack the court's exercise of its discretion in fixing the amount of the damages, but only the inclusion of elements of recovery not permitted" under the Death on the High Seas Act (R. 109; Appendix C, p. 14a). Respondent cross-appealed from this judgment, specifying as error that the evidence demanded a much higher award of damages.

By a divided court, the Court of Appeals affirmed the judgment of the District Court. Circuit Judge Cameron dissented.

In affirming the judgment of the District Court, the Court of Appeals rejected the contention of Petitioner that the

true basis for an award of damages under the Death on the High Seas Act is the annual sum shown to have been contributed by decedent to Respondent prior to death. The Court of Appeals held that such a contention would

> "deprive the trial court of the right to give any effect to the community property laws of the state of Louisiana which have the effect of declaring that one half of the husband's current income belongs to the wife . . . of the right to consider that if Mr. Stiles increased his income he might increase Mrs. Stiles's personal pecuniary enjoyment in such increase either by increasing payments actually made to her, or by expenditures made by him for the benefit of both or by accumulations of excess income over current expenditures. . . . of the right to consider that such accumulation, both as to her one-half under community property rules, and also of his part as well, might ultimately be inherited by the wife" (R. 100; Appendix C, pp. 6a-7a).

The Court of Appeals thereupon determined that, in assessing damages under the Death on the High Seas Act, it was proper for the District Court to give effect to the "likelihood" of decedent's future earnings, the "likelihood" of Respondent's "pecuniary enjoyment of her part of" such earnings, and the "likelihood" that Respondent "would also have benefited" by decedent's own "accumulations of his half of the community income either during life or as his heir or legatee" (R. 101; Appendix C, p. 7a).

The Court of Appeals also rejected the contention of Petitioner that the Death on the High Seas Act does not permit the awarding of interest from the date of death on the damages assessed. In this respect, the Court below held that the Act "clearly allows interest from the date of death" as an element necessary to compensate Respondent for the pecuniary loss sustained by reason of the death of

her husband (R. 106-107; Appendix C, p. 12a). Further, that Congress, in creating the right of action for a death occurring on the high seas, "intended for it to be governed by the traditional admiralty conception of interest as an element of the loss suffered by the claimant" (R. 107-108; Appendix C, pp. 12a-13a). This "traditional admiralty conception of interest" referred to by the Court of Appeals is sought to be supported in this death action by decisions in admiralty dealing with the loss of property (R. 104, 105; Appendix C, pp. 9a, 10a).

REASONS FOR GRANTING THE WRIT

I.

The decision of the Court of Appeals below is in conflict with decisions of the Court of Appeals for the Second Circuit on the same matter.

The rule of damages under the Death on the High Seas Act established by the Court below conflicts with the rule of damages under that Act established by the Court of Appeals for the Second Circuit. Recognizing that the object and purpose of the Death on the High Seas Act is to continue the support of dependents after the casualty,[1] the Court of Appeals for the Second Circuit has established that the recovery permitted by the Death on the High Seas Act is a sum representing the loss of support occasioned to the dependents by the death; and that such sum is to be computed on the basis of the actual contributions shown to have been made by decedent prior to death to the dependents for the latter's support. See, *Middleton* v. *Luckenbach S.S. Co.*, 2 Cir., 70 F. 2d 326, *cert. denied*, 293 U. S.

[1] *Middleton* v. *Luckenbach S.S. Co.*, 2 Cir., 70 F. 2d 326, 330, *cert. denied*, 293 U. S. 577.

577; *The S.S. Black Gull*, 2 Cir., 90 F. 2d 619, *cert. denied*, 302 U. S. 728.

The Court below has decided that damages under the Death on the High Seas Act cannot be limited to the actual contributions made by decedent to his widow prior to death, but in addition must include a sum which, according to the law peculiar to the place where decedent was resident, represents the extent to which the widow might participate in anticipated future income and accumulations of decedent (R. 100; Appendix C, pp. 6a-7a). In this case, the Court below, giving effect to the laws of the State of Louisiana (the place where decedent was resident), determined that such additional sum should be based on the likelihood of Respondent's participation in any increased future earnings or accumulations of decedent, whether in the form of increased contributions to Respondent from decedent, or the exercise by Respondent in her life of her rights in the community income as conferred by the Louisiana community property laws,[2] or as the heir or legatee of decedent (R. 101; Appendix C, p. 7a).

In this the Court below erred. The application of such a rule of damages in actions based on the Death on the High Seas Act would afford a broader right under that statute to a widow of a deceased resident of Louisiana than to a widow of a deceased resident of a different State which does not have laws comparable to the community property laws of Louisiana.

Such construction of the Death on the High Seas Act defeats the Congressional objective "to insure uniformity of treatment to residents of all of the states unaffected by the different rules applying in the several states" (Judge

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[2] Louisiana Stat. Ann.—Civil Code, arts. 2399-2424.

Cameron, dissenting, Appendix C, p. 15a). See also, in this connection, *Lindgren* v. *United States*, 281 U. S. 38, 47, where this Court stated that state law cannot be resorted to in order to establish a measure of damages under the Jones Act.[3]

II.

The decision of the Court of Appeals below is in conflict with the principles of applicable decisions of the Courts of Appeals for the Second, Fifth and Sixth Circuits.

The decision of the Court below that the Death on the High Seas Act permits the awarding of interest from the date of death on the damages assessed is in conflict with the principles established in *Cleveland Tankers, Inc.* v. *Tierney*, 6 Cir., 169 F. 2d 622; *Louisiana & Arkansas Ry.* v. *Pratt*, 5 Cir., 142 F. 2d 847; *Sabine Towing Co.* v. *Brennan*, 5 Cir., 85 F. 2d 478, *cert. denied*, 299 U. S. 599; and *Cortes* v. *Baltimore Insular Line, Inc.*, 2 Cir., 66 F. 2d 526.

The precise question whether the Death on the High Seas Act permits the awarding of interest from the date of death has not previously been decided by this Court, nor by any of the United States Courts of Appeals. However, the above-cited decisions of the Courts of Appeals for the Second, Fifth and Sixth Circuits, treating of the same question under related Federal death statutes,[4] are in conflict with the decision of the Court below.

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[3] 41 Stat. 1007, 46 U. S. C. §688.

[4] These related death statutes are the Federal Employers' Liability Act, 35 Stat. 65, 45 U. S. C. §§51-60, and the Jones Act, 41 Stat. 1007, 46 U. S. C. §688. The Federal Employers' Liability Act is incorporated by reference in the Jones Act. *Lindgren* v. *United States*, 281 U. S. 38, 40. These two Acts, as well as the Death on

In *Cortes* v. *Baltimore Insular Line, Inc.*, 2 Cir., 66 F. 2d 526, the Court of Appeals for the Second Circuit held that the trial court had erred in awarding interest on the verdict from the date of death, and in so ruling, stated: "Neither the Jones Act nor the Federal Employers' Liability Act (45 U. S. C. A. §§51-59) permits the awarding of interest before the damages are judicially ascertained." 66 F. 2d at 529. This ruling was subsequently adhered to by that Court in *Casey* v. *American Export Lines, Inc.*, 2 Cir., 173 F. 2d 324, 326, *reversed on other grounds*, 176 F. 2d 337, *cert. denied*, 338 U. S. 885.

The Court of Appeals for the Sixth Circuit is in accord with the Second Circuit. See, *Cleveland Tankers, Inc.* v. *Tierney*, 6 Cir., 169 F. 2d 622, 626, where the Court stated: "In recoveries under the Federal Employers' Liability Act, an award of interest is not permitted prior to the judicial determination of damages . . . The same rule applies under the Jones Act . . ."

Likewise, the Court of Appeals for the Fifth Circuit has held that interest from the date of death cannot be awarded under the Federal Employers' Liability Act and the Jones Act. See, *Louisiana & Arkansas Ry.* v. *Pratt*, 5 Cir., 142 F. 2d 847, and *Sabine Towing Co.* v. *Brennan*, 5 Cir., 85 F. 2d 478, *cert. denied*, 299 U. S. 599. In the *Pratt* case, the Court of Appeals for the Fifth Circuit, in an action under the Federal Employers' Liability Act, reversed a judgment which had awarded interest from the date of judicial

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the High Seas Act, are Congressional Acts patterned after Lord Campbell's Act, 9 & 10 Vict. c. 93, 1846, *Van Beeck* v. *Sabine Towing Co.*, 300 U. S. 342, 346, and the measure of damages under these Acts is the same. See, *Middleton* v. *Luckenbach S.S. Co.*, 2 Cir., 70 F. 2d 326, *cert. denied*, 293 U. S. 577. The Court below recognized this in its opinion (R. 101; Appendix C, p. 7a, footnote 4).

demand pursuant to a Louisiana statute. In so ruling, the Court reasoned:

> "The Act itself contains no provision with respect to interest, and the measure of damages in actions under it, being inseparably connected with the right of action created, must be settled according to general principles of law as administered in the federal courts at the time of enactment . . .
>
> The item of accrued interest presents a question of substantive law. We think, therefore, that the silence of the federal statute upon the subject of interest may not be construed as leaving the subject unlegislated upon in the Act, but is indicative of the considered purpose that no interest should be allowed in such actions prior to verdict. Since the Act is exclusive, state statutes upon the measure of damages, including Louisiana Act 206 of 1916, are superseded in so far as they are in conflict." 142 F. 2d at 848-9.

In *Sabine Towing Co.* v. *Brennan*, 5 Cir., 85 F. 2d 478, *cert. denied*, 299 U. S. 599, the Court of Appeals for the Fifth Circuit held that the Jones Act does not provide for interest before the damages are judicially determined, and permitted interest to run only from the date of entry of the decree fixing the damages in the District Court.

The Court below disagreed with the only reported appellate decision on this question under the Death on the High Seas Act, namely, *Wyman* v. *Pan American Airways, Inc.*, 181 Misc. 963, 43 N. Y. S. 2d 420, *aff'd*, 267 App. Div. 947, 48 N. Y. S. 2d 459, *aff'd*, 293 N. Y. 878, 59 N. E. 2d 785, *cert. denied*, 324 U. S. 882. The Court of Appeals of the State of New York in the *Wyman* case affirmed, *inter alia*, a holding of the trial court that, as the Death on the High

Seas Act contains no provision for interest, interest may not be allowed on a verdict under that Act. The *Wyman* case was recently followed by the District Court for the Southern District of New York in *First Nat. Bank of Greenwich* v. *National Airlines, Inc.*, S. D. N. Y., 171 F. Supp. 528, 538, a case likewise brought under the Death on the High Seas Act, and which arose out of the same accident in which Respondent's husband died.

While the Court below recognized that Congress may have enacted the Federal Employers' Liability Act and the Jones Act in the light of the rule prohibiting the awarding of interest from the date of death in actions at law (R. 107; Appendix C, p. 12a), it appears to have taken the position that since the right of action under the Death on the High Seas Act is in admiralty, and in admiralty interest has traditionally been allowed in actions for the *loss of property*, interest from the date of death can therefore be awarded under the Death on the High Seas Act (R. 103, 104, 107-108; Appendix C, pp. 9a, 10a, 12a-13a).

III.

The Court of Appeals below has decided an important question of federal law which has not been but should be settled by this Court.

The questions presented herein involve the judicial construction and interpretation of a federal statute of national, and indeed international, importance. This Court has never passed upon these questions.

The Death on the High Seas Act, like the Federal Employers' Liability Act and the Jones Act, is intended to operate uniformly in all of the States, unaffected by the

laws of the several States. See, *Lindgren* v. *United States*, 281 U. S. 38. There is presently a conflict, as a result of the decision of the Court below, between the Courts of Appeals for the Second and Fifth Circuits on the measure of damages under the Death on the High Seas Act. The decision of the Court below has also created a conflict between the Fifth Circuit and the Second and Sixth Circuits on the question whether interest is allowable from the date of death in an action under the federal death statutes.[5]

Moreover, the Court below has decided that, in assessing damages under the Death on the High Seas Act, it is proper for the District Court to give effect to the laws of the place where the decedent was resident bearing upon the quantum of pecuniary loss. Such decision opens the door for the application of as many rules of damages in these actions as there are States in the Union, and indeed, foreign countries,[6] thereby defeating the Congressional objective of uniform interpretation, construction and application of federal statutes.

It is imperative, therefore, that this Court settle the questions presented herein.

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[5] Death on the High Seas Act, 41 Stat. 537, 46 U. S. C. §§761-768, Federal Employers' Liability Act, 35 Stat. 65, 45 U. S. C. §§51-60, and Jones Act, 41 Stat. 1007, 46 U. S. C. §688.

[6] This rule of damages would permit, for example, the law of a foreign country, in which decedent was resident at the time of death, to affect the assessment of damages in an action in a District Court under the Death on the High Seas Act, where decedent was killed in an accident on the high seas involving a United States flag carrier.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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September 8, 1959.

APPENDIX A

Statutory Provisions Involved

DEATH ON THE HIGH SEAS ACT

Sections 1 and 2, 41 Stat. 537, 46 U. S. C. §§761, 762

Section 1:

RIGHT OF ACTION; WHERE AND BY WHOM BROUGHT

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued.

Section 2:

AMOUNT AND APPORTIONMENT OF RECOVERY

The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought.

APPENDIX B

Decree of the District Court

(No opinion filed)

DECREE

(Number and title omitted) (Filed: October 17, 1958)

This cause came on for trial on August 4, 1958, on the issue of damages only, and was duly tried, argued and submitted, and the Court took time to consider.

Now, therefore, after due consideration.

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment in favor of Libelant, BERYL WHITEMAN STILES, and against the respondent, NATIONAL AIR LINES, in the full sum of Two Hundred Fifty Thousand Dollars ($250,000.00) with interest at the rate of 5% per annum from February 14, 1953, until paid, and costs.

New Orleans, Louisiana, October 7, 1958.

s/ HERBERT W. CHRISTENBERRY
United States District Judge

APPENDIX C

Opinion and Judgment of the Court of Appeals

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 17587

NATIONAL AIRLINES, INC.,

Appellant-Appellee,

versus

BERYL WHITEMAN STILES,

Appellee-Appellant.

(AND REVERSE TITLE.)

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

(June 12, 1959.)

Before:

TUTTLE, CAMERON and WISDOM,

Circuit Judges.

TUTTLE, *Circuit Judge*:

This is an appeal by National Airlines from a judgment awarded Mrs. Stiles in the sum of $250,000 plus interest

from the date of her husband's death in an airplane crash as being excessive as a matter of law, and a cross appeal by the wife on the ground that the record facts demanded, as a matter of law, a substantially greater judgment.

Harry Stiles was a successful New Orleans lawyer whose income from his law partnership averaged $41,800.00 per year at the time of his death. He lost his life when an airliner of the appellant's fleet was lost under circumstances held by the trial court to be negligent. See *Stiles* v. *National Airlines*, 161 F. Supp. 125. The holding as to liability is not appealed.

At the time of his death Stiles was 51 years of age. He had a life expectancy of 20.2 years. His wife was younger, and she thus had a longer expectancy.

The action was brought under the Death on the High Seas Act, 46 U.S.C.A. 761,[1] which has been held to cover death resulting from air accidents over the high seas, *Trihey* v. *Transocean Air Lines*, 9 Cir., 255 F. 2d 824. It will be noted that the recovery in such a case is expressed as "a fair and just compensation for the pecuniary loss sustained." 46 U.S.C.A. 762.[2]

There are two distinct issues presented on this appeal. (1) Did the trial court err as a matter of law in awarding

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1 "§761. Right of action; where and by whom brought.

Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued."

2 "762. Amount and apportionment of recovery.

The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought."

the judgment of $250,000, either because the largely undisputed testimony demanded either a larger or smaller award? (2) Was it legally permissible for the trial court to make an award of interest to run between the date of death and the date of judgment?

We affirm the trial court's judgment on both counts. The trial court considered the question of damages entirely on depositions. Although numerous objections were noted as to the relevance of certain evidence, none was passed on by the trial court on the trial and we consider that there is no question before us as to the propriety of the trial court's considering all of the evidence which had probative value in arriving at its decision.

As to the first question, the dispute is sharply drawn by counsel's respective contentions. The defendant airline says the evidence was clear that at the time of her husband's death Mrs. Stiles was not actually receiving in cash or dollar value for her own exclusive use more than $7246.00 per year. (It makes a different computation of $6746.00 as an alternative figure.) It says that if the court found that the husband would remain gainfully employed for the rest of his expectancy and could and would continue "to contribute the same annual amount to the defendant *for the latter's sole benefit*," (emphasis added) the court was required to limit the award to a sum representing this annual contribution for 20.2 years reduced to a present cash value. This figure, it says, could not exceed $108,599.78 if figured at a 3% rate of return, or $99,131.65 at a 4% rate, which it claims should be used.

The plaintiff, on the other hand, says that the record is clear that a maximum of only $17,000 was spent on the average by the husband for business expenses and personal items, leaving $24,800 which is the amount of her annual loss, either because she should share this amount with him during life or it would accumulate and

she would receive it on his death. Thus, she says, this sum should be multiplied by 20.2 and discounted at the present cash value. This computation would produce $347,000, using a 3% rate or $339,264, if discounted at 4%. Mrs. Stiles contended further that the opinion evidence (undisputed in the record) that Mr. Stiles's law practice income would have averaged $70,000 per annum had he lived, would increase this amount to a mathematical and legal certainty to $622,685.00.[3]

Thus, the defendant claims that the "pecuniary loss sustained" by the wife of a 51 year old lawyer whose earnings at time of death averaged $41,800 and would have by the date of trial four years later been in excess of $70,000 must be restricted to the present cash value of the relatively small amount which he currently gave her as a cash allowance or which she received for her sole benefit for household and like expenditures, plus half of an item of $3500 estimated by her to be spent by her husband for their clothing, contributions and miscellaneous expenses.

Such a contention would deprive the trial court of the right to give any effect to the community property laws of the state of Louisiana which have the effect of declaring that one half of the husband's current income belongs to the wife. See *Bender* v. *Paff*, 282 U.S. 127; Succession of Wiener, 203 La. 649; 14 So. 2d 475. It would also deprive the trial court of the right to consider that if Mr. Stiles increased his income he might increase Mrs. Stiles's personal pecuniary enjoyment in such increase either by increasing payments actually made to her, or by expenditures made by him for the benefit of both or by accumulations of excess income over current expenditures. It would,

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3 She also contended that to whatever sum was thus determined she was entitled as a matter of law to an additional $50,000 representing the pecuniary value of the "loss of Mr. Stiles's care and advice." It is so patent that on this record no legal issue can be raised as to this sum that it is not further referred to.

of course, deprive the trial court of the right to consider that such accumulation, both as to her one-half under community property rules, and also of his part as well, might ultimately be inherited by the wife.

The airline especially criticizes the theory that the possibility of an inheritance by Mrs. Stiles of any accumulations during the period of his expectancy may be considered by the trial court as an element in determining the pecuniary loss sustained. Ordinary common sense, it seems to us, would refute this contention. It is as likely that a wife in these circumstances, who did in fact inherit her husband's entire estate on his untimely death, would continue to be the natural object of his affection and beneficence if he lived out his expectancy and made substantial additional accumulations as that he would continue to give her the kind of support the defendant admits the court could assume would continue. No authoritative decision has been called to our attention and we have found none that holds such consideration to be inappropriate in such an inquiry. We have held in a decision announced today in *Martin* v. *Atlantic Coast Line R.R.*, 5 Cir., —— F. 2d ——, an FELA case, that on principle this is a proper element to be considered by the trial court in assessing damages. Cf. *O'Toole* v. *United States*, 3 Cir., 242 F. 2d 308.[4]

Having determined that the likelihood of future earnings, the likelihood of the wife's pecuniary enjoyment of her part of them, and the likelihood that she would also have benefited by her husband's own accumulations of his half of the community income either during life or as his heir or legatee were all properly before the court, it is

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4 Both the FELA and the Death on the High Seas Act are "Lord Campbell Acts," *Van Beeck* v. *Sabine Towing Co.*, 300 U. S. 342, 346, and are subject to the same measure of damages. *Michigan Cent. R.R.* v. *Vreeland*, 227 U. S. 59; *Middleton* v. *Luckenbach S.S. Co.*, 2 Cir., 70 F. 2d 326, cert. denied, 293 U. S. 577.

plain, we think, that we cannot hold on this record that an award of $250,000 was, by law, excessive.

It does not follow, however, that the particular amount of the judgment was demanded by the evidence. Nor, a fortiori, can it be held that a larger sum was, by law, demanded. It is impossible to tell exactly how the trial court arrived at the figure it determined. It is plain, however, that it could consider, but not be bound by, the life expectancy of the decedent, evidence as to the rate of interest to be applied for arriving at a present value; the possibility of Mr. Stiles continuing to practice his profession at an ascending scale financially, or the reverse; the possibility that, with ample other means which appeared from the evidence, and no family other than his wife, he might be content to take an early retirement. There was also the possibility that the wife might not outlive her husband, notwithstanding her younger age, or that he would in fact leave his inheritance by will to his sister or to charity. All of these elements, speculative as they are, the court had the right to consider.[5]

As we have indicated, the trial court did not, in its judgment, make specific mathematical calculations from which it is possible to ascertain which of these circumstances weighed most heavily in its determination of the amount. It is not required to do so, *Roby* v. *Sun Record Co.*, 5 Cir., 242 F. 2d 684. Mrs. Stiles's request that we compute a larger sum and enter a judgment for it does not fall within the powers of this Court, for it is the trial court, not we, which has this function to perform. See *Sanders* v. *Leech*, 5 Cir., 158 F. 2d 486. On the record before us the trial court could give such weight as it thought

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5 See *Louisville & N. R.R.* v. *Holloway*, 246 U. S. 528; *Chesapeake & O. Ry.* v. *Kelly*, 241 U. S. 485; *Baltimore & Potomac R.R.* v. *Mackey*, 157 U. S. 72, 93; *Michigan Cent. R.R.* v. *Barron*, 5 Wall. (72 U. S.) 90, 106; *Illinois Cent. Ry.* v. *Spence*, 93 Tenn. 173, 23 S. W. 211, 215.

appropriate to the many circumstances before it. The parties did not seek by motion below to isolate those parts of the evidence which they now insist could not legally be considered by the trial court.

We repeat what we said in *Sanders* v. *Leech*, *supra*, at page 488:

> "In these circumstances it is not our duty to determine whether, if we were triers, we would have awarded damages in the same, a greater, or a lessor amount. It is our duty to determine only whether we can say that the amount awarded was so inadequate that it was clearly erroneous, that is unjust. The evidence furnishes no basis for determination that it was."

We turn next to the propriety of the court's allowing interest from the date of the negligent death. The argument runs: This is a new right created by statute; the statute does not in express terms provide for the allowance of interest; hence interest cannot be allowed.

The statute states two things plainly: (1) The recovery is to be for "a fair and just compensation for the pecuniary loss sustained," and (2) the right of action is in admiralty.

Logically and sensibly, if the pecuniary loss to Mrs. Stiles for the death of her husband is $250,000, based on an expectancy of 20.2 years from the date of his death, she will not receive full value for her pecuniary loss if she does not receive the award until after judgment four and one-half years later. Although the statement was made in connection with a property loss, the following language aptly expresses the correct thought:

> ". . . Damage is sustained as of a certain date. What the damage is may not be and is not affected by the time when estimated, but the damage is as found, and an award made on one date is not the equivalent of an award made at an earlier date. The delay thus

> enters into the late award as an element of loss, and the damage awarded is for a sum which is the equivalent of what would have been a smaller sum if earlier awarded . . ." The Manhattan, 3 Cir., 85 F. 2d 427, 429, cert. denied 300 U.S. 654.

This is simply the doctrine of *restitutio in integrum*, long a leading maxim applied by admiralty courts. The President Madison, 9 Cir., 91 F. 2d 835, 845-47. It is quite obvious that a party suffering a financial loss from the death of a bread winner, just as from the destruction of a ship, can be placed in the same position as he previously enjoyed only if the award is made at the time of the loss or if interest for the time between loss and payment is allowed.

We find no federal case arising under this statute which expressly decides whether interest from the date of death may be added in order to provide fair and just compensation. It is quite clear that with as many uncertain factors as there are for consideration by the court in arriving at the fair value of plaintiff's pecuniary loss the length of time to the date of judgment may sometimes be taken into consideration by the court in determining the amount of its award. In such a case the court should not, of course, allow interest on such amount. Here, however, the court made plain its finding that the award was a fair measure of Mrs. Stiles's pecuniary loss as of the date of her husband's death, and interest on the amount was awarded to make her recovery complete.

Interest from the date of loss has long been allowed, of course, in admiralty for property loss. The Natchez, 5 Cir., 78 Fed. 183; *Geotechnical Corp. of Delaware* v. *Pure Oil Co.*, 5 Cir., 214 F. 2d 476. The allowance of such interest is the rule except for good cause shown. Admiralty thus stands on a different footing from the common law in this respect, for the general rule in common law had tradi-

tionally been that pre-judgment interest could not be allowed on an unliquidated tort claim. See for a discussion of this distinction, *Moore-McCormack Lines* v. *Amirault*, 1 Cir., 202 F. 2d 893, and see for a discussion of the more modern trend, even in common law actions, the note in 36 A.L.R. 2d, 343, where at 345 it is said:

> "Where the damages are of a pecuniary character and are measurable in money with reasonable certainty, the trend of modern decision seems to be to allow interest as a matter of right. Thus, generally speaking, interest is allowable as a matter of right in actions of trover, trespass, or replevin, and in condemnation proceedings. . . . According to most cases whenever interest is allowed as a part of the damages, it runs from the date of the injury to, or detention, loss, or destruction of, the property involved."

Lacking any federal decisions under this act, the airline relies heavily on a New York State decision which applied the Death on the High Seas Act in state litigation. In *Wyman* v. *Pan American Airways, Inc.*, 181 Misc. 963, 43 N.Y.S. 2d 420, aff'd. 267 App. Div. 947, 48 N.Y.S. 2d 459, aff'd. 293 N.Y. 878, 69 N.E. 2d 785, cert. denied 324 U.S. 882, the New York court held: "As the said statute contains no provision for interest, it follows that interest may not be allowed on the verdict here . . ."

Appellant also relies on the federal cases decided under the Jones Act, 46 U.S.C.A. 688, and the Federal Employers' Liability Act, 45 U.S.C.A. 51, 60. Typical of these are *Chicago M. St. P. & P. RR* v. *Busby*, 8 Cir., 41 F. 2d 617, and *Cortes* v. *Baltimore Insular Line*, 2 Cir., 66 F. 2d 526, holding that judgments under these statutes cannot include interest for the period preceding judgment. There is also the case from this circuit which holds the allowance of interest is discretionary in admiralty, and disallowed it.

Sabine Towing Co. v. *Brennan*, 5 Cir., 85 F. 2d 478, a Jones Act case tried in admiralty.

With deference to the New York court, we conclude that the language of the statute here for construction clearly allows interest from the date of death as an element necessary to provide "fair and just compensation for the pecuniary loss incurred," where the trial court clearly showed that no such increment was included in the principal award. The Jones Act and FELA cases are clearly distinguishable because in each of them Congress created a cause of action *at law* (though the Jones Act plaintiff may elect to sue in admiralty), which, moreover, comprehends the right of the plaintiff to recover for pain and suffering and injuries up to the date of trial and as to the future. It is quite understandable that Congress may have enacted these statutes in light of the common law rule on interest because where the injuries and consequences of injuries continue up to the date of trial and beyond it would be much easier to figure damages as of the date of trial. This would not be so in the case of a simple death statute, where the entire loss occurs at one time and is measured as of that time.[6] It is also understandable that the court would apply the same rule as to interest under the Jones Act, whether the particular suit was for death or for injury and pain and suffering and whether the suit was brought in admiralty or on the law side of the court. On the other hand, it is equally understandable that when Congress created a right of action for "pecuniary loss" for death only and created it as solely an admiralty action it intended for it to be

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6 In the Jones Act and FELA cases, even where the injured person has died before the trial the jury may still have to deal with damages for pain and suffering which continued over a period of time, since the administrator may join a claim for pain and suffering of the deceased with his claim for pecuniary loss to the beneficiaries. 45 U. S. C. A. 59; *St. Louis, Iron Mtn. Ry.* v. *Craft*, 237 U. S. 648. The computation of interest in such a case might be an undesirably confusing assignment to give to the average jury.

governed by the traditional admiralty conception of interest as an element of the loss suffered by the claimant. In any case, Congress clearly did intend to provide for full compensation for the loss; and, as we have explained above, the courts cannot carry out this clear mandate without taking into account the inadequacy of delayed compensation.

Moreover, it is apparent that this Court has set no precedent to the contrary. In the Sabine Towing case, *supra*, the Court of Appeals was using its own discretion in denying interest, rather than reversing discretion exercised by the trial court. This was in accord with the idea formerly held that the Courts of Appeals had the power to try admiralty cases de novo. Such a rule no longer obtains. *McAllister* v. *United States*, 348 U.S. 19.

The judgment is

AFFIRMED.

CAMERON, *Circuit Judge* (Dissenting):

The record before us does not, in my opinion, sufficiently present the issues of law the court below was bound to consider in reaching its decision to enable us intelligently to pass upon the contentions of the parties. This is so because of the complete failure of the trial court to find the facts and state separately its conclusions of law as required by the Rules of Practice in Admiralty and Maritime Cases.[1] The court below heard the evidence and the arguments on August 4, 1958, and held the case under study until October

1 Rule 46½ provides the following:

"Findings of Fact and Conclusions of Law. In deciding cases of admiralty and maritime jurisdiction the court of first instance shall find the facts specially and state separately its conclusions of law thereon; and its findings and conclusions shall be entered of record and, if an appeal is taken from the decree, shall be included by the clerk in the record which is certified to the appellate court under Rule 49."

17 when it filed its decree, which merely awarded judgment in favor of Mrs. Stiles and against National Airlines "in the full sum of $250,000.00 . . ."

The amount of the award in this case would depend necessarily upon how the court decided several questions of law as to which the parties took sharp issue. In fact, as I understand appellant's contentions, it does not attack the court's exercise of its discretion in fixing the amount of the damages, but only the inclusion of elements of recovery not permitted by law. The extremely large verdict rendered by the trial court could only be justified, as appellant contends, by its finding all of the facts in favor of the widow and concluding all of the question of law in her favor. We are left without any inkling of the court's decision on these points of law. To pass upon its verdict and judgment amounts, therefore, in my opinion, to judging in the dark.

Among the sharply contested issues of law before the trial court was whether appellee was entitled to recover one-half of her husband's prospective earnings as a matter of right.[2] The opinion does not decide this question, i.e., whether in a suit under this Federal Statute, which fixes the limits of recovery, the Louisiana State Statute would control or be entitled to consideration; but, from the above quotation, it seems to accept appellee's position with re-

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2 Appellee thus states her position: "First, the Airline's computations are based only on the cash contributions which Mrs. Stiles actually received from her husband during his lifetime. The Airline takes no account of (a) Mrs. Stiles' community property half interest, in her own right, in all of her husband's earnings, or (b) the fact that Mrs. Stiles as her husband's sole heir, would have inherited the balance of his saved earnings at his natural death."

The majority refers to this question in these words: "Such a contention would deprive the trial court of the right to give any effect to the community property laws of the State of Louisiana which have the effect of declaring that one half of the husband's current income belongs to the wife. See Bender v. Paff, 282 U. S. 127; Succession of Wiener, 203 La. 649, 14 So. 2d 475."

spect to it. The two cases cited in support of the majority's reference to this problem are tax cases. I find no authority in appellee's brief or in the Court's opinion for the application here of the Louisiana Statute. From the oral argument it would be assumed that appellee takes the position that, if the fact-finder concluded that decedent would have averaged net earnings of $50,000 per year for the period of his expectancy, it should automatically award to the widow one-half of that amount by way of damages.

If such be the law, recovery under this federal act by a beneficiary living in Louisiana would vastly exceed recovery by a beneficiary of a person living just across the state line in Mississippi. Such a result contravenes, in my opinion, all of the teachings of the cases, that this series of acts, of which the Federal Employers' Liability Act is one of the first and the one most often encountered, was enacted to insure uniformity of treatment to residents of all of the states unaffected by the different rules applying in the several states.[3]

Whether the award to which appellee was entitled was limited to contributions decedent would probably have made to her based upon experience and any probative evidence as to future earnings; whether the amount should include "such accumulation, both as to her one-half under community property rules, and also of his part as well, [which]

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3 The general law under F. E. L. A. is thus stated in 35 Am. Jur., Master and Servant, §519, pp. 949-950: "While there has been considerable controversy as to the measure and amount of damages recoverable in an action under the Federal Employers' Liability Act, it is now settled that the measure of damages is to be determined according to the provisions of the Act itself and the general common law as administered by the federal courts, unaffected by state legislation or the decisions of state courts. This is true in respect both of actions by the employee for his own personal injuries, and in actions by the representatives of an employee who is killed or who dies from injuries received, for the benefit of the next of kin designated in the statute."

4 As the majority seems to think.

might ultimately be inherited by the wife"; whether the discount rate should be four per cent, as contended by appellant, in arriving at the present cash value of "the pecuniary loss" the widow sustained by the death of decedent, all present questions of law earnestly argued by both parties and support in most instances by respectable authority. The trial court was bound to resolve these questions of law and under Admiralty Rules it was required to set down its conclusions and the facts to which it applied them in reaching the result upon which judgment was predicated.

At the hearing covered by the record before us the only issue presented was the amount to be awarded appellee. Damages are commonly fixed by juries and the elements which they are entitled to consider are carefully spelled out in the court's charge. Where damages are awarded by the court, it can, under said Rules, do no less than include in its findings and conclusions the elements of damages upon which the award is based. The failure of the court below so to do requires, in my opinion, that its judgment be reversed and *a fortiori* requires that we do not put our approval upon it.

Admiralty Rule 46½ made it obligatory upon the court to enter its findings of fact and conclusions of law, and I know of no practice which puts a litigant in default for not submitting requested findings, unless requested by the court to do so.[5] Rule 52(a), F. R. C. P. specifically exempts the parties from any obligation to request findings of fact and conclusions of law, and Professor Moore states, 7 Moore's Federal Practice, 2d Edition, page 4431, that "it has been generally held that such Admiralty Rules should be given the same construction as that given to identical Rules of Civil Procedure."

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5 *The Plough City*, 3 Cir., 1941, 122 F. 2d 816, 819.

We recently[6] vacated a judgment and remanded an admiralty case to the district court solely because of its failure to make findings of fact and conclusions of law as required by Rule 46½, quoting from a Supreme Court decision stating "that there must be findings, stated either in the court's opinion or separately, which are sufficient to indicate the factual basis for the ultimate conclusion."

I am unable also to go with the majority on the matter of interest. The authorities it cites are not to me convincing. As far as I am advised, it has always been the law that judgments for unliquidated damages do not carry interest prior to their rendition,[7] and that interest will not be allowed on damages for personal injuries.[8] I find nothing in the majority opinion or in the briefs of counsel to warrant so radical a departure from so well established a principle. If Congress had intended so drastic a change, it would have said so in the statute. *Funkhouser* v. *Preston*, 290 U.S. 163, 168-169, and *Louisiana and Arkansas Railway Co.* v. *Pratt*, 5 Cir., 1944, 142 F. 2d 847.

For these reasons I respectfully dissent.

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6 *Victory Towing Co., Inc.* v. *Bordelon*, 1955, 219 F. 2d 340.

7 15 Am. Jur., Damages, §161, pp. 579-580.

8 "The general rule is that interest will not be allowed on damages for personal injuries. Thus, interest is improperly awarded for personal injuries caused by negligence or for personal injuries against a master, where the party causing the injury could not be benefited. . . ." 15 Am. Jur., Damages, §171, pp. 587-588.

Judgment

Extract from the Minutes of June 12, 1959.

No. 17587

NATIONAL AIRLINES, INC.,

versus

BERYL WHITEMAN STILES,

(AND REVERSE TITLE.)

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, National Airlines, Inc. be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Cameron, Circuit Judge, dissenting."

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No. 378

IN THE

Supreme Court of the United States

October Term, 1959

NATIONAL AIRLINES, INC.,

Petitioner,

—v.—

BERYL WHITEMAN STILES,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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In the

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No. 378

National Airlines, Inc.,

Petitioner,

—v.—

Beryl Whiteman Stiles,

Respondent.

PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Petitioner prays that this Court grant rehearing of its order of November 9, 1959, denying the petition for a writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Fifth Circuit in the above entitled case, as prayed for in the petition filed September 8, 1959 herein.

Reasons for Granting Rehearing and Issuing the Writ

I. ***Article III, Section 2 of the Constitution of the United States prohibits the construction given the Death on the High Seas Act by the Court of Appeals below.***

This provision of the Constitution, by which the judicial power of the Courts of the United States is extended "to all Cases of admiralty and maritime Jurisdiction,"[1] en

[1] U. S. Const. art. III, §2.

visages a system of federal maritime law to be applied uniformly by the Courts of the United States, without interference in that application by the laws of the several States.

The Court of Appeals below has held that a District Court in assessing pecuniary loss under the Death on the High Seas Act can give effect to State law bearing on the quantum of damages. Specifically the Court below has approved resort to the Louisiana community property law and inheritance laws in order to establish a measure of damages under the Death on the High Seas Act.[2]

The doctrine of uniform application of federal maritime law appears to have been first enunciated by this Court in *The Lottawanna*,[3] 88 U. S. (21 Wall.) 558, as follows:

> "One thing, however, is unquestionable; the Constitution must have referred to a system of law coextensive with, and operating uniformly in, the whole country. It certainly could not have been the intention to place the rules and limits of maritime law under the disposal and regulation of the several States, as that would have defeated the uniformity and consistency at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."

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[2] That State law cannot be resorted to in order to establish a measure of damages under the Jones Act, see *Lindgren* v. *United States*, 281 U. S. 38, 47.

[3] 88 U. S. (21 Wall.) at 575.

The doctrine was later reasserted by this Court in *Southern Pacific Co. v. Jensen*, 244 U. S. 205, where it was stated:

> ". . . it must now be accepted as settled doctrine that in consequence of these provisions [Article I, 8 and Article III, 2 of the Constitution] Congress has paramount power to fix and determine the maritime law which shall prevail throughout the country." [Bracketed material supplied.]

Pursuant to the Commerce clause of the Constitution, Congress enacted the Death on the High Seas Act to create a right of action for wrongful death, occasioned by a tortious act occurring on the high seas beyond a marine league from the shores of any State. Prior to this enactment, such right did not exist. *The Harrisburg*, 119 U. S. 199.

The Death on the High Seas Act applies only where the wrongful act complained of occurs beyond the jurisdiction of any State, in an area where exclusive jurisdiction has been vested in the Federal government by the Constitution of the United States. This Act must therefore be interpreted and construed uniformly by the Courts of the United States, without resort to State law, to fulfill the Constitutional aim of uniformity and consistency "on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states."[1]

The holding of the Court of Appeals below thwarts this aim.

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[1] 244 U. S. at 215.

U. S. Const. art. I, 8, cl. 3.

The Lottawanna, 88 U. S. (21 Wall.) 558, 575.

This Court has recently shown considerable concern with the delineation of State and Federal jurisdiction in the field of maritime law where there was a possible overlapping of these jurisdictions.[1] Of even greater importance is the question presented herein where the right sought to be enforced exists only by virtue of a Federal statute which applies only where the act complained of occurs beyond the jurisdiction of any State. This question is whether this Federal statute, namely the Death on the High Seas Act, is nevertheless to be construed and interpreted in accordance with State law, contrary to the doctrine of uniform application of federal maritime law.

The Court of Appeals below has held that the Death on the High Seas Act is to be so construed. The implications of such erroneous ruling are unlimited for it leaves open the possibility of as many different interpretations of this Federal statute as there are States in the Union. Certainly this is not the uniformity and consistency at which the Constitution of the United States is aimed, and unless this Court corrects the error of the Court below in this regard, such aim will be defeated.

2. *The Court of Appeals below construed the Death on the High Seas Act to allow interest from the date of death as an element necessary to provide "fair and just compensation" to Respondent by reason of the death of her husband. If this construction be correct, then the Act is unconstitutional.*

Prior to the entry of the Decree of the District Court assessing damages Petitioner was not legally obligated to Respondent in any amount. By that Decree, the District Court assessed the damage occasioned to Respondent by

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[1] See *The Tungus* v. *Skovgaard*, 358 U. S. 588; and *United New York and New Jersey Sandy Hook Pilots Ass'n* v. *Halecki*, 358 U. S. 613.

the death of her husband to be $250,000, and ordered Petitioner to pay that amount. In addition, however, the District Court in its Decree ordered Petitioner to pay interest on that amount from the date of death.[7]

The Court of Appeals affirmed the award of interest from the date of death by the District Court, and in so doing construed the Death on the High Seas Act as clearly allowing such award. As so construed the Act requires the payment by Petitioner of an amount which has accrued prior to a judicial determination of Respondent's damage. Such construction renders the Death on the High Seas Act unconstitutional since it authorizes the taking of property from Petitioner before due process of law is had, in contravention of Amendment V to the Constitution of the United States.[8]

The construction rendered by the Court of Appeals in this regard is erroneous. Certainly Congress did not intend the Act to be construed in a manner which renders it unconstitutional. The language of the Act does not require nor in fact even suggest such construction.

The Act permits the recovery of the "fair and just compensation" for the damage sustained. In construing the phrase "just compensation", as it appeared in a special act of Congress permitting certain claims to be made against the United States, this Court has held that interest is not a part thereof. *United States* v. *Goltra*, 312 U. S. 203. In *Boston Sand and Gravel Co.* v. *United States*, 278 U. S. 41, this Court held that interest is no part of "legal damages", reasoning as follows:

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[7] The Decree of the District Court awarded interest computed from the date of death until the judgment is paid, but we are concerned herein only with the period from the date of death to the date of entry of the Decree awarding damages.

[8] U. S. Const., amend. V.

> "It [interest] might be [a part of 'legal damages'] in case of the detention of money. But this is not a claim for the detention of money, nor can any money be said to have been detained. When a jury finds a man guilty of a tort . . . it may determine not only the facts but also a standard of conduct that he is presumed to have known and was bound at his peril to follow . . . But legal fiction never reached the height of holding a defendant bound to know the estimate that a jury would put upon the damage that he had caused."[10] [Bracketed material supplied.]

A claim made pursuant to the Death on the High Seas Act is not a claim for the detention of money. The cause of action created by that Act is the damage sustained, not the detention of the money to be paid for it. Until a District Court determines pursuant to proper judicial process that a person is guilty of a tort and must respond in damages then determined, it cannot be said that any money is being detained from the injured party. To construe the Death on the High Seas Act to permit the accrual of an amount prior to such a determination is not only an improper interpretation of the Act, but is a construction which renders the Act unconstitutional.

A gross injustice results from this erroneous construction by the Court below. The accident in which Respondent's husband lost his life occurred on February 14, 1953; Respondent instituted this action *more than one year later;* trial on the issue of liability was not held by the District Court until *more than four years after the date of death,* namely March 11, 1957; judgment on the issue of liability was not rendered by the District Court until *a year after such trial, or more than five years after the date of death;* trial on the issue of damages was held approximately *five years and six months after the date of death* and the Dis-

[10] 278 U. S. at 48-49.

trict Court's Decree awarding damages in the sum of $250,000, with interest from the date of death until paid, was not rendered until October 7, 1958, *or five years and eight months after the date of death.* It was not until this latter date that Petitioner was adjudged liable to pay any amount to Respondent to compensate her for her damages then determined. Nevertheless, the District Court ruled, and the Court of Appeals has affirmed such ruling, that Petitioner must in addition pay interest on these damages, which interest Petitioner then learned had been accruing for well over five years. Petitioner at no time was in a position to take steps to prevent the accrual of such interest until Respondent's damages had been determined by the District Court five and a half years after the death, by which time the accrued amount of interest exceeded the sum of $68,000.

CONCLUSION

For the reasons set forth above and in the petition for a writ of certiorari, it is respectfully urged that rehearing be granted and that upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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November 27, 1959

Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

.....

Attorney for Petitioner